

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JHEN SCUTELLA,)	
Plaintiff,)	
)	C.A. No. 23-92 Erie
v.)	
)	
ERIE COUNTY PRISON, et al,)	District Judge Susan Paradise Baxter
Defendants.)	Chief Magistrate Judge Richard A. Lanzillo

MEMORANDUM ORDER

This action was commenced by Plaintiff's filing of a *pro se* civil rights complaint accompanied by a motion for leave to proceed *in forma pauperis*, on March 27, 2023. The matter was referred to Chief United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On June 20, 2023, Plaintiff filed a motion for injunctive relief/temporary restraining order [ECF No. 5] seeking an Order directing Defendants to enjoin the Erie County Prison ("ECP") from violating inmates' constitutional and state rights. In particular, Plaintiff complains that inmates are allowed to leave their cells for only "a fraction of the supposed time" allowed by ECP's "training mode," and are "sometimes not even being allowed to shower, make phone calls, or use the kiosk to contact personnel, and that he personally has been prevented from showering and exercising for days at a time. (*Id.* at ¶¶ 3-4). Plaintiff alleges further that he has been quarantined two times for ten days at a time, while only being allowed out of his cell for twenty minutes per day. (*Id.* at ¶ 2). Finally, Plaintiff alleges that a recent influx of detainees at

ECP “are not locked down and are able to move freely” in violation of the Fourteenth Amendment Equal Protection Clause. (Id. at ¶ 9).


On August 4, 2023, Chief Magistrate Judge Lanzillo issued a Report and Recommendation (“R&R”) [ECF No. 9] recommending that Plaintiff’s motion for temporary restraining order be denied because Plaintiff has failed to demonstrate either an imminent risk of irreparable injury or a substantial likely of success on the merits, and that Plaintiff’s request for injunctive relief, which has been construed as a motion for preliminary injunction, be deferred pending service of his complaint and motion upon Defendants. Plaintiff has since filed timely objections to the R&R [ECF No. 10], in which raises additional concerns related to incidents that have happened since the filing of his injunction motion. However, these matters were not before Judge Lanzillo when he made his recommendation, and have been presented here, for the first time, on objections. Thus, they will not be considered. See Murr v. U.S., 200 F.3d 895, 902 n.1 (6th Cir. 2000) (collecting cases and noting that “absent compelling reasons, [the Magistrate Judge Act] does not allow parties to raise at the district court stage new arguments or issues that were not presented to the magistrate”). Plaintiff is free to file a new motion based on subsequent events.

After *de novo* review of the motion and relevant documents in the case, together with the report and recommendation and objections thereto, the following order is entered:

AND NOW, this 19th day of October, 2023;

IT IS HEREBY ORDERED that Plaintiff’s motion for injunctive relief/temporary restraining order [ECF No. 5] is DENIED to the extent the motion seeks a temporary restraining order, and is DEFERRED as to Plaintiff’s motion for injunctive relief, which is construed as a

motion for preliminary injunction, pending service of Plaintiff's complaint and motion upon Defendants. The report and recommendation of Chief Magistrate Judge Lanzillo, issued August 4, 2023 [ECF No. 9], is adopted as the opinion of the court.


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
Chief U.S. Magistrate Judge